IN THE HIGH COURT OF JUDICATURE AT BOMBAY

ORDINARY ORIGINAL CIVIL JURISDICTION

APPEAL NO.85 OF 2006
IN
NOTICE OF MOTION NO.3918 OF 2005
IN
SUIT NO.1366 OF 1986

M/s.Cherokee Equipments
and Ors. ..Appellants

Vs.

Shiamak Fali Marshall ..Respondent

...

Mr.Milind Vasudeo i/b Khaitan & Jayakar
for Appellants
Mr.Ashwin Thakkar i/b Thakkar & Co.
for Respondent
Mr.D.V.Deokar 1st Assistant to Court
Receiver

...

CORAM: F.I.REBELLO AND
SMT.V.K.TAHILRAMANI,JJ.

DATE : AUGUST 7,2006

P.C.

1. This appeal challenges the order dated 23.12.2005. The learned Judge by that order, directed removal of Defendant Nos.2 and 3 as agents of the Court Receiver. In doing so, the learned Judge took into consideration that the appellants who

are defendant Nos.2 and 3, had not entered into Agency Agreement on proper stamp paper nor had they paid the royalty and that accounts were also not furnished. On behalf of the appellants, our attention is invited to the order dated 29.8.1986 passed in Appeal No. 771 of 1985 wherein it is set out as under:

. "Receiver will not demand any royalty from original Defendant Nos. 2 and 3."

2. It appears that the attention of the learned Judge was not drawn to the order. The learned Judge erroneously proceeded on the footing that the appellants were bound to pay royalty when in fact, no royalty is due and payable. Our attention is also invited to the observations made by learned Single Judge in the order dated 2.4.2004 in Arbitration Application No.262 of 2003 in Suit No.1366 of 1986 more specifically in para 4 wherein the learned Judge has noted that Receiver has accordingly taken charge of the books of accounts of defendant No.1 firm and that Court Receiver shall give inspection of books

and record if the party so desires, within two weeks from the date.

3. Considering the above, the ends of justice would be met if the impugned order dated 28.8.2006 is set aside and the matter is remitted back to the learned Court for reconsidering the motion according to law. Accordingly, the impugned order is set aside and the matter is remitted back to the learned Court for reconsideration.

4. Appeal is disposed of.

[F.I.REBELLO, J.]

[SMT.V.K.TAHILRAMANI,J.]